

02:47PM

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH BONGIOVANNI,

Defendant.

Case No. 1:19-cr-227
(LJV)

February 15, 2024

TRANSCRIPT EXCERPT - EXAMINATION OF S.U.S.P.O. PETER LEPIANE
BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

TRINI E. ROSS, UNITED STATES ATTORNEY
BY: JOSEPH M. TRIPI, ESQ.
NICHOLAS T. COOPER, ESQ.
CASEY L. CHALBECK, ESQ.

Assistant United States Attorneys
Federal Centre
138 Delaware Avenue
Buffalo, New York 14202

And

UNITED STATES DEPARTMENT OF JUSTICE
BY: JORDAN ALAN DICKSON, ESQ.

1301 New York Ave NW
Suite 1000
Washington, DC 20530-0016
For the Plaintiff

SINGER LEGAL PLLC

BY: ROBERT CHARLES SINGER, ESQ.

80 East Spring Street
Williamsville, New York 14221

And

LAW OFFICES OF PARKER ROY MacKAY

BY: PARKER ROY MacKAY, ESQ.

3110 Delaware Avenue
Kenmore, New York 14217
For the Defendant

PRESENT:

BRIAN A. BURNS, FBI Special Agent
MARILYN K. HALLIDAY, HSI Special Agent
KAREN A. CHAMPOUX, USA Paralegal

1 **LAW CLERK:** **REBECCA FABIAN IZZO, ESQ.**

2 **COURT DEPUTY CLERK:** **COLLEEN M. DEMMA**

3 **COURT REPORTER:** **ANN MEISSNER SAWYER, FCRR, RPR, CRR**
4 Robert H. Jackson Federal Courthouse
5 2 Niagara Square
6 Buffalo, New York 14202
7 Ann_Sawyer@nywd.uscourts.gov

8
9 * * * * * * *

10 (Excerpt commenced at 2:47 p.m.)

11 (Jury is present.)

02:47PM 12 **THE COURT:** Okay. The government can call its first
02:47PM 13 witness. And I want to make sure both sides have all
02:47PM 14 potential witnesses excluded from the courtroom now.

02:47PM 15 You can call your first witness.

02:48PM 16 **MR. COOPER:** Thank you, Your Honor. The government
02:48PM 17 calls Peter Lepiane.

02:49PM 18 **P E T E R L E P I A N E,** having been duly called and sworn,
02:49PM 19 testified as follows:

02:49PM 20 **MR. COOPER:** May I inquire, Judge?

02:49PM 21 **THE COURT:** You may.

02:49PM 22 **DIRECT EXAMINATION BY MR. COOPER:**

02:49PM 23 Q. Good afternoon, sir.

02:49PM 24 A. Good afternoon.

02:49PM 1 Q. Would you please introduce yourself to the jury, and let
02:49PM 2 them know what you do for work?

02:49PM 3 A. Sure. My name is Peter Lepiane, I'm a supervising United
02:49PM 4 States probation officer.

02:49PM 5 Q. And where are you a supervising United States probation
02:49PM 6 officer?

02:49PM 7 A. For the Western District of New York, I actually work in
02:49PM 8 this building, so --

02:49PM 9 Q. Can you tell the jury a little bit about your education,
02:49PM 10 Mr. Lepiane?

02:49PM 11 A. Yes. I have a master's degree from Niagara University in
02:49PM 12 criminal justice administration, undergrad in political
02:50PM 13 science.

02:50PM 14 Q. When you graduated, what sort of work did you get into
02:50PM 15 right after school?

02:50PM 16 A. Right away, I got into this work. I started as an intern
02:50PM 17 with our office here, and then became a probation officer
02:50PM 18 assistant, and worked my way up.

02:50PM 19 Q. Can you tell the jury a little bit about what your
02:50PM 20 responsibilities were as a probation officer assistant?

02:50PM 21 A. Yes. So I supervised individuals that were released on
02:50PM 22 supervision, probation or supervised release in the
02:50PM 23 community, and then monitored their compliance with certain
02:50PM 24 conditions.

02:50PM 25 Q. Okay. And we're going to talk a little bit more in

1 detail about that in a moment, but can you describe first
2 your progression from an assistant probation officer, kind of
3 through the ranks in U.S. Probation?

4 A. Yes. So I was hired in September of 2006 as a probation
5 officer assistant.

6 2007, I was promoted to a U.S. probation officer.

7 2014, I was promoted to the location monitoring
8 specialist that dealt with ankle-bracelet individuals.

9 And in 2018, was promoted to a supervising U.S. probation
10 officer.

11 Q. And can you tell the jury about how your responsibilities
12 are different now as a supervising United States probation
13 officer?

14 A. Yes. So, now I supervise a group of officers that
15 supervise individuals that are released to the community.

16 Q. I'd like for you to educate us a little bit on sentencing
17 in federal court. How does a person end up getting sentenced
18 in the context of a criminal case?

19 A. So when someone is convicted of a federal crime that then
20 are subject to a sentence by a federal judge, the judge will
21 issue sentence, and then the judgment will be prepared
22 detailing that sentence.

23 Q. Is one of the available sentences a period of
24 incarceration?

25 A. Yes.

02:51PM 1 Q. Okay. And if somebody is sentenced to a period of
02:51PM 2 incarceration, is probation involved in monitoring them while
02:52PM 3 they're incarcerated?
02:52PM 4 A. No.
02:52PM 5 Q. Does probation become involved after that person is no
02:52PM 6 longer incarcerated?
02:52PM 7 A. Yes.
02:52PM 8 Q. Can you describe that to our jury?
02:52PM 9 A. Sure. As they're transitioning from their incarceration,
02:52PM 10 there's a -- there's a period of time for that transition
02:52PM 11 period where a probation officer will be assigned to then
02:52PM 12 start prerelease activities and transition planning. Once
02:52PM 13 they've completed their time, incarceration time, we will
02:52PM 14 then -- our authority will kick in to start supervising the
02:52PM 15 individual.
02:52PM 16 Q. Okay. And what's that called, that period of time when
02:52PM 17 you, as a probation officer, are supervising the individual
02:52PM 18 after a period of incarceration?
02:52PM 19 A. It's called supervised release.
02:52PM 20 Q. And are there terms and conditions that a person has to
02:52PM 21 follow on supervised release?
02:52PM 22 A. Yes.
02:52PM 23 Q. Who sets those terms and conditions?
02:52PM 24 A. The sentencing judge.
02:52PM 25 Q. Do you, as a probation officer, make recommendations to

02:52PM 1 the sentencing judge?

02:52PM 2 A. Yes.

02:52PM 3 Q. Are there standard conditions that most cases have?

02:53PM 4 A. Yes. There's standard conditions that defendants are all
02:53PM 5 subject to, yes. And then there's special conditions that
02:53PM 6 are tailored specifically by the Court for those individual
02:53PM 7 defendants.

02:53PM 8 Q. Okay. Now, is it also possible that a person receives a
02:53PM 9 sentence where they're monitored by probation, but they're
02:53PM 10 never incarcerated before that?

02:53PM 11 A. Yes. That's called a term of probation. There's no
02:53PM 12 incarceration associated with that.

02:53PM 13 Q. And other than that distinction, is a term of probation
02:53PM 14 very similar to a term of supervised release?

02:53PM 15 A. Yes.

02:53PM 16 Q. Would it be fair to say supervised release is basically
02:53PM 17 post-incarceration probation?

02:53PM 18 A. Yes.

02:53PM 19 Q. Okay. Who's responsible for ensuring that a defendant or
02:53PM 20 individual under probation's supervision is complying with
02:53PM 21 those conditions?

02:53PM 22 A. The assigned U.S. probation officer.

02:53PM 23 Q. And during the course of your career, have you been the
02:54PM 24 assigned U.S. probation officer responsible for doing that?

02:54PM 25 A. Yes.

02:54PM 1 Q. Has that happened once or more than once?

02:54PM 2 A. It's happened a lot.

02:54PM 3 Q. Okay. About how many people do you think you've
02:54PM 4 supervised throughout the course of your career?

02:54PM 5 A. Hundreds.

02:54PM 6 Q. Okay. What happens if someone violates conditions of
02:54PM 7 supervised release?

02:54PM 8 A. So, if someone violates a condition, we'll take steps to
02:54PM 9 bring them back into compliance. There's different things we
02:54PM 10 can do. We can ask the Court for modifications. It depends
02:54PM 11 on the severity of the violation. Sometimes we'll ask for
02:54PM 12 revocation of their release or probation, sometimes we'll try
02:54PM 13 to address it before we get to that stage.

02:54PM 14 Q. Does your office have the ability and the authority to
02:54PM 15 investigate suspected violations of conditions of release?

02:54PM 16 A. Yes. We're actually required by law, when we swear in as
02:54PM 17 U.S. probation officers, we're required by law to stay
02:54PM 18 informed how a person under supervision is complying with
02:54PM 19 their conditions, so we're required to.

02:54PM 20 Q. Let's talk a little bit about how you stay informed.

02:55PM 21 Do you work in conjunction with other law enforcement
02:55PM 22 agencies?

02:55PM 23 A. Yes.

02:55PM 24 Q. Okay. And is that something that happens, like, rarely,
02:55PM 25 once in a blue moon, during the course of your job?

02:55PM 1 A. It's regularly.

02:55PM 2 Q. Regularly?

02:55PM 3 A. Yes, regularly.

02:55PM 4 Q. What sorts of law enforcement agencies do you work with?

02:55PM 5 A. We've worked with local law enforcement agencies, state

02:55PM 6 law enforcement agencies, federal law enforcement agencies,

02:55PM 7 all different levels, that are in the community, the same

02:55PM 8 community as we're working in.

02:55PM 9 Q. Have you worked with the Buffalo Police Department

02:55PM 10 before?

02:55PM 11 A. Yes.

02:55PM 12 Q. Have you worked with the Erie County Sheriffs before?

02:55PM 13 A. Yes.

02:55PM 14 Q. Have you worked with federal law enforcement, like the

02:55PM 15 FBI?

02:55PM 16 A. Yes.

02:55PM 17 Q. Have you worked with the DEA before?

02:55PM 18 A. Yes.

02:55PM 19 Q. Are you required to interface and cooperate with those

02:55PM 20 law enforcement agencies in order to effectively do your job?

02:55PM 21 A. Yes.

02:55PM 22 Q. Are there times when your office provides information

02:55PM 23 that you've learned during the course of your duties to

02:56PM 24 another law enforcement agency?

02:56PM 25 A. Yes.

02:56PM 1 Q. Can you give an example of when that would happen?

02:56PM 2 A. Sure. When we have information that can be helpful to
02:56PM 3 them, or vice versa, for protecting the community.

02:56PM 4 For example, our agency is small. We need the resources
02:56PM 5 that law enforcement have out there. We have a common
02:56PM 6 objective of community protection, so we work with them in
02:56PM 7 sharing this information.

02:56PM 8 Q. Are there times when your office receives information
02:56PM 9 from other law enforcement agencies?

02:56PM 10 A. Yes.

02:56PM 11 Q. Hypothetically, if you're supervising John Smith, would
02:56PM 12 it be common for a law enforcement agency to come to you and
02:56PM 13 say, hey, I think John Smith is selling drugs?

02:56PM 14 A. It -- it would be -- not common, but it would happen,
02:56PM 15 yes. If they had information that John Smith was selling
02:56PM 16 drugs, and they found out he was on supervision with us, they
02:56PM 17 hopefully would call us up and let us know, yes.

02:56PM 18 Q. Would it be your expectation that they would come and let
02:56PM 19 you know?

02:56PM 20 A. Yes.

02:56PM 21 Q. So you just described for us the manner in which
02:57PM 22 U.S. Probation interacts with and works in concert with other
02:57PM 23 law enforcement agencies. Do you assume, as a matter of
02:57PM 24 course, that information you're receiving from federal agents
02:57PM 25 is accurate information?

02:57PM

1 A. Yes.

02:57PM

2 Q. Is that trust inherent in your job?

02:57PM

3 A. Yeah, it's necessary.

02:57PM

4 Q. Is it your common practice to doubt information that you
5 learn from a sworn federal agent?

02:57PM

6 A. No.

02:57PM

7 Q. Are you familiar with a person by the name of Joseph
8 Bongiovanni?

02:57PM

9 A. Yes.

02:57PM

10 Q. How do you know that person?

02:57PM

11 A. I worked with Joseph Bongiovanni on a couple cases during
12 my career.

02:57PM

13 Q. Do you know what agency he worked for?

02:57PM

14 A. Yes, the DEA.

02:57PM

15 Q. Have you interacted with him in person before?

02:57PM

16 A. Yes.

02:57PM

17 Q. Are you familiar with what he looks like?

02:57PM

18 A. Yes.

02:57PM

19 Q. About how many cases have you worked on in your career
20 with Joseph Bongiovanni?

02:58PM

21 A. Probably a handful, four or five cases.

02:58PM

22 Q. Is Joseph Bongiovanni in the courtroom today?

02:58PM

23 A. Yes.

02:58PM

24 Q. Would you point him out for the jury, and identify him by
25 an article of his clothing?

02:58PM

02:58PM 1 A. Sure. He's sitting at the table there. He's got a blue
02:58PM 2 tie on and a dark blue coat.

02:58PM 3 **MR. COOPER:** Judge, for the record, the witness
02:58PM 4 identified the defendant.

02:58PM 5 **THE COURT:** Yes, he did.

02:58PM 6 **BY MR. COOPER:**

02:58PM 7 Q. Are you familiar with an individual by the name of Peter
02:58PM 8 Gerace?

02:58PM 9 A. Yes.

02:58PM 10 Q. How do you know that person?

02:58PM 11 A. I supervised him during a period of time in 2009.

02:58PM 12 Q. Can you just describe for the jury how it is that you
02:58PM 13 became assigned to supervise Peter Gerace?

02:58PM 14 A. I was -- we have in our office every day what's called a
02:58PM 15 duty officer, it rotates, to make sure someone's in the
02:58PM 16 office to take phone calls.

02:58PM 17 I happened to be the duty officer on August 31, 2009. I
02:58PM 18 received a phone call regarding Peter Gerace, and then was
02:59PM 19 assigned to his case.

02:59PM 20 Q. Okay. Before August 31st of 2009, were you the assigned
02:59PM 21 officer for Peter Gerace?

02:59PM 22 A. No.

02:59PM 23 Q. Do you know who was?

02:59PM 24 A. Yes. We had a probation officer assistant who had just
02:59PM 25 recently left the agency that was assigned.

02:59PM 1 Q. Okay. So by the time you received that phone call as the
02:59PM 2 duty probation officer, the person who had been supervising
02:59PM 3 Peter Gerace was gone or on his way out; is that fair to say?
02:59PM 4 A. Correct, yes.
02:59PM 5 Q. And did you take over supervising Peter Gerace?
02:59PM 6 A. I did, yes.
02:59PM 7 Q. Okay. When you supervise an individual who's on
02:59PM 8 supervised release, are you familiar with the underlying
02:59PM 9 charges that resulted in their sentence?
02:59PM 10 A. Yes.
02:59PM 11 Q. Okay. Did you know what agency Peter Gerace had been
02:59PM 12 investigated by and prosecuted by previously?
02:59PM 13 A. Yes.
02:59PM 14 Q. Was it the DEA?
02:59PM 15 A. No.
02:59PM 16 Q. Okay. Does United States Probation keep and maintain
02:59PM 17 records that document their supervision of an individual?
03:00PM 18 A. Yes.
03:00PM 19 Q. Is that in the regular course of your job to keep those
03:00PM 20 records?
03:00PM 21 A. Yes.
03:00PM 22 Q. What are those records called?
03:00PM 23 A. They're called chronological records, or referred to as
03:00PM 24 chronos.
03:00PM 25 Q. Okay. You give them a shorthand of chronos?

03:00PM 1 A. Yeah. A lot of us can't spell chronological, so chronos
03:00PM 2 is a better way of spelling it.

03:00PM 3 Q. Are those chrono logs kept and made in the ordinary
03:00PM 4 course of your duties as a probation officer?

03:00PM 5 A. Yes.

03:00PM 6 Q. Okay. Did you create chrono logs related to your
03:00PM 7 supervision of Peter Gerace?

03:00PM 8 A. Yes.

03:00PM 9 Q. Now, the next questions I'm going to ask you are going to
03:00PM 10 be questions about back in 2009, so if at any point you don't
03:00PM 11 remember a specific answer, I don't want you to guess, I want
03:00PM 12 you to tell me. And if you need to look at your
03:00PM 13 chronological records, let me know, and we can handle that
03:00PM 14 with the Court. Okay?

03:00PM 15 A. Okay.

03:00PM 16 Q. You told the jury a moment ago that on August 31st, 2009,
03:01PM 17 an incident happened that caused you to take over the
03:01PM 18 supervision of Peter Gerace; is that correct?

03:01PM 19 A. Yes.

03:01PM 20 Q. Okay. Can you tell the jury what that incident was?

03:01PM 21 A. Sure. I received a phone call from FBI Agent Tom Herbst
03:01PM 22 who indicated he'd like to meet with me regarding Mr. Gerace
03:01PM 23 and possible illegal activity at Pharaoh's Gentlemen's Club.

03:01PM 24 Q. As a result of the phone call that you had from Special
03:01PM 25 Agent Tom Herbst, did you take official action in your job?

03:01PM 1 A. Yeah. I then met that same day with Special Agent Tom
03:01PM 2 Herbst in my office, and we discussed the information that he
03:01PM 3 had.

03:01PM 4 Q. Did you familiarize yourself with the conditions of
03:01PM 5 Gerace's post-release supervision?

03:01PM 6 A. Yes.

03:01PM 7 Q. Okay. Based on the information that Special Agent Herbst
03:01PM 8 provided you, did you take certain follow-up actions?

03:01PM 9 A. Yes. So, we received information that Mr. Gerace was
03:01PM 10 possibly operating -- owned and operated Pharaoh's
03:01PM 11 Gentlemen's Club. That was a violation of his conditions to
03:02PM 12 do that. He had been told by the State Liquor Authority that
03:02PM 13 he couldn't work there, and also by our office.

03:02PM 14 So when we received that information, we took steps to
03:02PM 15 then investigate whether or not that was the case. And we
03:02PM 16 did that in a variety of different ways.

03:02PM 17 Q. Okay. Now a little earlier in your direct examination, I
03:02PM 18 asked you about probation's role in investigating suspected
03:02PM 19 violations of conditions of release; do you remember that?

03:02PM 20 A. Yes.

03:02PM 21 Q. In that course, or in that part of your job, when you're
03:02PM 22 investigating a suspected violation, is probation authorized
03:02PM 23 or able to search?

03:02PM 24 A. Yes, if it's -- if it's a special condition of the
03:02PM 25 person's release, we are able to search.

03:02PM 1 Q. Okay. And do you need to obtain a search warrant signed
03:02PM 2 by a judge in order to conduct that search?

03:02PM 3 A. No. The search condition is part of the sentence that's
03:02PM 4 given, it's one of their conditions of probation or
03:02PM 5 supervised release. And it's the search authority the Court
03:02PM 6 gives us to then do that.

03:03PM 7 Q. Did Peter Gerace have a search condition?

03:03PM 8 A. He did, yes.

03:03PM 9 Q. Now you told us a little bit about the information that
03:03PM 10 you learned from Special Agent Herbst that Gerace was working
03:03PM 11 at Pharaoh's Gentlemen's Club; is that correct?

03:03PM 12 A. That he owned and operated, yes.

03:03PM 13 Q. Okay. Was there information related to drugs that
03:03PM 14 Special Agent Herbst provided you?

03:03PM 15 A. Yes, he said he was also using and distributing drugs at
03:03PM 16 the club.

03:03PM 17 Q. And when you say "he" in that sentence, who is that?

03:03PM 18 A. Peter Gerace.

03:03PM 19 Q. Okay. Did you conduct surveillance after you had this
03:03PM 20 meeting with Special Agent Herbst?

03:03PM 21 A. Yes. Myself, several other officers within our probation
03:03PM 22 office, and other law enforcement agencies conducted
03:03PM 23 surveillance of the club, different days, different times, to
03:03PM 24 try to establish a pattern of when Mr. Gerace was there.

03:03PM 25 Q. Did that investigation progress over a period of weeks

1 | into Gerace?

2 | A. Yeah, it was about a two-month period of time of an

3 | investigation, and then we decided to execute a search on

4	October 31st, 2009.
---	---------------------

5 | Q. You told us a little earlier in your direct examination

6 | that probation has limited personnel and resources, and you

7 | often work with other law enforcement agencies. Did any

8 | other law enforcement agencies support your investigation

9 | into this Peter Gerace?

10 | A. Yes. We worked with the FBI, and we also worked with

11 Cheektowaga police.

12 | Q. As a result of that two-month investigation into Gerace,

13 including surveillance and other work, did it culminate in

14 | another activity -- another investigative activity?

15 | A. After the search, are you saying?

16 Q. After the surveillance.

17 | A. After the surveillance, then we did a search on that

18		date.
----	--	-------

19 | Q. Okay. Do you remember the date of the search?

20	A. Yeah, October 31st, 2009.
----	------------------------------

21 Q. Okay. And where were you searching?

22 | A. We searched Pharaoh's Gentlemen's Club in Cheektowaga.

23 Q. Were you personally present for that search?

24 | A. Yes, sir.

25 | Q. Who else was present?

03:05PM 1 A. Several members of our U.S. Probation Office search team,
03:05PM 2 Cheektowaga police, and FBI.

03:05PM 3 Q. When you say FBI, do you recall who was there from the
03:05PM 4 FBI?

03:05PM 5 A. Yeah, Special Agent Tom Herbst was there.

03:05PM 6 Q. Can you describe for the jury how that search of
03:05PM 7 Pharaoh's Gentlemen's Club played out on October 31st of
03:05PM 8 2009?

03:05PM 9 A. Yes. So that morning, we went to the club, set up there.
03:05PM 10 The hope was that Mr. Gerace would just answer the phone or
03:05PM 11 the door. His vehicle was in the parking lot there.

03:05PM 12 Eventually, Cheektowaga police went to the door to do
03:05PM 13 what's called a welfare check to make sure everything was
03:05PM 14 okay inside.

03:05PM 15 He opened the door, and then let us into the building.

03:05PM 16 Q. On that date, October 31st, 2009, was Peter Gerace
03:05PM 17 administered a drug test?

03:05PM 18 A. He was.

03:05PM 19 Q. Okay. Did Gerace say anything to you when you
03:05PM 20 administered him the drug test?

03:05PM 21 A. He admitted to using cocaine the previous evening.

03:06PM 22 Q. Is that a violation of his conditions of supervision?

03:06PM 23 A. Yes.

03:06PM 24 Q. What was the result of the presumptive test?

03:06PM 25 A. It was positive for cocaine.

Q. As a result of the search at Pharaoh's Gentlemen's Club, other than the drug test, what were you looking for inside of the club?

A. Any evidence that he was -- had owned and operated the club. Like, our purpose was to verify the statements that were being made from the FBI, the information that they were gathering that he was owning and operating. So we were looking for documentation in his name, anything that would tie him to the club.

Q. Okay. Did you arrest Gerace that day and bring him back to this courthouse?

A. No, sir.

Q. What happened after the search?

A. So we did find the documents tying him to the -- that he was owning and operating the club, bank statements, credit cards in his name, in his wallet.

We told him we would follow up with him after -- actually, I -- we told him to report to the office the next business day, and we left.

Q. Is that a common activity? Or were you cutting him a break? What happened there?

A. It's common. It all depends on the severity. What we had there in front of us wasn't a violation of law or a risk to the community at that point. Had it been, we would have asked the Court for a warrant, taken him into custody, or had

03:07PM 1 the locals charge him with something.

03:07PM 2 But what we had was information of noncompliance, not to
03:07PM 3 the level of risk at that moment that we needed to arrest
03:07PM 4 him.

03:07PM 5 Q. And is it fair to say that information informed how you
03:07PM 6 proceeded forward?

03:07PM 7 A. Yes.

03:07PM 8 Q. Okay. Did you determine, based on what you had found at
03:07PM 9 the search at Pharaoh's, that Peter Gerace had violated the
03:07PM 10 terms of his supervised release?

03:07PM 11 A. Yes.

03:07PM 12 Q. What did you do as a result of that?

03:07PM 13 A. So, I then -- you know, later on, I talked to my
03:07PM 14 supervisor. I actually reached out to the U.S. Attorney's
03:08PM 15 Office, spoke to Tony Bruce, who I think was assigned Peter
03:08PM 16 Gerace's case at that time. But that's -- we usually work
03:08PM 17 with the U.S. Attorney, when we bring violations, that's who
03:08PM 18 represents us on the violations in court. And I had
03:08PM 19 follow-up meetings with Tom Herbst, as well.

03:08PM 20 Q. Is it fair to say that violations of supervised release
03:08PM 21 or suspected violations of supervised release do not get
03:08PM 22 resolved overnight?

03:08PM 23 A. Yes.

03:08PM 24 Q. Do they tend to take some time to play out in court?

03:08PM 25 A. Yes.

03:08PM 1 Q. Do you have discretion as the probation officer
03:08PM 2 supervising an individual to determine how to play it or how
03:08PM 3 to handle the result, the resolution of that supervision?
03:08PM 4 A. Yes. The Court gives us discretion based on the severity
03:08PM 5 of the violation. Like I said a little earlier, had it been
03:08PM 6 a risk of danger to the community, it would have been an
03:08PM 7 immediate notification to the Court.
03:09PM 8 Some different -- may call technical violations, we'll
03:09PM 9 then gather more information and try to maybe come up with
03:09PM 10 some alternatives to a revocation.
03:09PM 11 Q. Okay. So the day of the search, did you have a decision
03:09PM 12 already about how that was going to resolve?
03:09PM 13 A. No.
03:09PM 14 Q. It was still up in the air?
03:09PM 15 A. Yes.
03:09PM 16 Q. Was DEA present for that search at Pharaoh's?
03:09PM 17 A. No.
03:09PM 18 Q. I want to speak with you about the aftermath from the
03:09PM 19 search at Pharaoh's. After that search, did you receive
03:09PM 20 contact from someone at DEA about Peter Gerace?
03:09PM 21 A. Yes.
03:09PM 22 Q. Who contacted you?
03:09PM 23 A. So on November 3rd, I received a phone call from Special
03:09PM 24 Agent Joe Bongiovanni.
03:09PM 25 Q. What was the nature of that phone call?

03:09PM 1 A. So he called and said that Mr. Gerace had reached out to
03:09PM 2 him about potentially cooperating to lessen his violation
03:09PM 3 sentence.

03:09PM 4 Q. Did Bongiovanni make any statements to you about whether
03:09PM 5 Gerace had any status with him as a cooperating source?

03:10PM 6 A. Yeah. He said that in the past, he had been a
03:10PM 7 confidential source of information, and wanted to do that
03:10PM 8 again. He wanted to meet with the DEA.

03:10PM 9 Q. Did you believe that information when he told it to you?

03:10PM 10 A. Yes.

03:10PM 11 Q. Did you log that conversation in your chronos?

03:10PM 12 A. Yes.

03:10PM 13 Q. Have you reviewed your chronos before you testified here
03:10PM 14 today?

03:10PM 15 A. Yes.

03:10PM 16 Q. After the search at Pharaoh's, did you stay in touch with
03:10PM 17 Special Agent Herbst from the FBI?

03:10PM 18 A. Yes. He actually called me the day before Agent
03:10PM 19 Bongiovanni called me to say that Gerace had reached out to
03:10PM 20 them about cooperating to lessen the sentence.

03:10PM 21 And then I also talked to Herbst several times to follow
03:10PM 22 up as to whether or not that meeting was taking place.

03:10PM 23 Q. Was it your understanding that Special Agent Herbst was
03:10PM 24 interested in developing a case to charge Peter Gerace with
03:11PM 25 new violations of federal law?

03:11PM 1 A. I just knew he was investigating him. I didn't know the
03:11PM 2 status of their case at all.

03:11PM 3 Q. Did you understand that Herbst was pursuing an interview
03:11PM 4 with Gerace as a potential source of information?

03:11PM 5 A. Yes.

03:11PM 6 Q. Did that meeting happen right away between Herbst and
03:11PM 7 Gerace?

03:11PM 8 A. No.

03:11PM 9 Q. Can you tell us what you know about that?

03:11PM 10 A. I know it was approximately -- it would be in the
03:11PM 11 chronos, but approximately -- didn't take place for two weeks
03:11PM 12 after the initial phone call.

03:11PM 13 I got the phone call from Tom Herbst on November 2nd, and
03:11PM 14 from Agent Bongiovanni on November 3rd.

03:11PM 15 And then it was at least two weeks after that before they
03:11PM 16 actually met. It actually got to the point where, during our
03:11PM 17 investigation, we had confirmed with the State Liquor
03:11PM 18 Authority and through other means that he was in fact in
03:12PM 19 violation of his conditions for several reasons, so we had
03:12PM 20 decided we were going to move forward with what's called a
03:12PM 21 modification for location monitoring.

03:12PM 22 Q. Okay. Can you put that in layperson's terms? Was that a
03:12PM 23 good thing, or a bad thing for Peter?

03:12PM 24 A. He was gonna get modified to wear an ankle bracelet for
03:12PM 25 the remainder of his term, so I guess it's better than jail,

03:12PM 1 but I wouldn't want an ankle bracelet on.

03:12PM 2 Q. So it was a step up on the supervision that he was gonna
03:12PM 3 be receiving; is that fair?

03:12PM 4 A. Correct. It was a sanction. It was a response to his
03:12PM 5 noncompliance in hopes to bring him back into compliance.

03:12PM 6 Q. Did you ever have a conversation with Special Agent
03:12PM 7 Herbst about how his meeting with Peter Gerace went?

03:12PM 8 A. Yes. Special Agent Herbst told me that he met with
03:12PM 9 Mr. Gerace, and he did not feel he had any information to
03:12PM 10 offer him.

03:12PM 11 Q. Okay. Did the resolution that you just described, the
03:12PM 12 sanction of -- of location monitoring, did that occur after
03:12PM 13 you heard from Special Agent Herbst that Gerace had nothing
03:13PM 14 to offer?

03:13PM 15 A. I think it was -- I -- I know it was submitted to the
03:13PM 16 Court and signed after, but we had already made the decision
03:13PM 17 before.

03:13PM 18 Q. Did you provide any preferential treatment to Peter
03:13PM 19 Gerace as a result of the phone call that you got from Joe
03:13PM 20 Bongiovanni?

03:13PM 21 A. No.

03:13PM 22 **MR. COOPER:** Okay. Just one moment, please, Judge.
03:13PM 23 I have no further questions, Judge. Thank you.

03:13PM 24 **THE COURT:** Okay. So let's take our afternoon break
03:13PM 25 now. I remind you not to make up your mind about anything,

and not to communicate with anyone including each other about the case. See you back here at about 3:25, 3:30.

(Jury excused at 3:13 p.m.)

THE COURT: Anything we need to put on the record from the defense?

MR. SINGER: Judge, just one brief legal issue.

So on one of the last questions that Mr. Cooper asked Mr. Lepiane --

THE COURT: Do you want Mr. Lepiane to be excused?

MR. SINGER: I mean, I don't think he has to be, no.

THE COURT: Okay, fine.

MR. SINGER: It deals with his chrono notes.

THE COURT: Fine.

MR. SINGER: So -- so the government asked Mr. Lepiane what it was that Special Agent Herbst communicated to him about how the cooperation issue went with Gerace. The government introduced the first half of the statement that Mr. Herbst gave to Mr. Lepiane, but it omitted the second half of that statement.

So under the Rule of Completeness, I'm going to ask Mr. Lepiane on the cross-examination about the other half of that and enter that statement in, because as of right now, the government's left an incorrect impression.

THE COURT: And that was one of those excerpts that we talked about earlier today?

2 **MR. COOPER:** Judge, first of all, I don't believe the
3 government left an incorrect impression. The witness
4 testified to his recollection. Counsel can cross-examine him,
5 ask him whatever questions he wants.

9 **THE COURT:** Yeah, you can ask about the rest of it,
10 and if, in fact, the testimony is inconsistent with the
11 report, we can deal with it.

18 **THE COURT:** I think -- I think I said that that was
19 not hearsay, didn't I?

23 THE COURT: Yeah.

25 | **THE COURT:** Yeah.

03:16PM 1 **MR. COOPER:** -- of the witness.

03:16PM 2 **THE COURT:** Yeah, I think that's right. Okay.

03:16PM 3 So, Mr. Lepiane, will you please leave the courtroom?

03:16PM 4 (Mr. Lepiane exited the courtroom at 3:16 p.m.)

03:16PM 5 **THE COURT:** So, Mr. Singer, I think you're correct.

03:16PM 6 I think you can -- I think Mr. Cooper's correct, that you can

03:16PM 7 cross-examine him, that you can ask questions about did

03:16PM 8 Special Agent Herbst say thus-and-so and thus-and-so, and if

03:16PM 9 he says he doesn't remember, you can show him the report to

03:17PM 10 refresh his recollection.

03:17PM 11 If he says no, he never said that, and it's different

03:17PM 12 in the report, then I think the report may come in to impeach

03:17PM 13 him. Especially because it's a business record.

03:17PM 14 We've already decided it's a business record. And

03:17PM 15 what you're talking about in the business record I don't think

03:17PM 16 is hearsay.

03:17PM 17 So, if I understand what you're saying, I think you

03:17PM 18 can do what you're asking to do, but I -- I, if you're gonna

03:17PM 19 offer the statement in as a business record, I guess you can.

03:17PM 20 **MR. SINGER:** It wasn't my intention, Judge, I just --

03:17PM 21 **THE COURT:** You can get --

03:17PM 22 **MR. SINGER:** Maybe I'm wrong on this from the

03:17PM 23 morning, but I thought that if this was gonna come up as an

03:17PM 24 issue, you wanted me to alert the Court as well as government

03:17PM 25 counsel to it before I asked the question, so --

03:17PM
03:17PM
03:17PM
03:17PM
03:17PM
03:17PM
03:17PM
03:17PM
03:17PM
03:17PM
03:18PM
03:18PM
03:18PM
03:18PM
03:18PM
03:18PM
03:18PM
03:18PM
03:18PM
03:18PM
03:18PM
03:18PM
03:18PM

1 **THE COURT:** And the question is --

2 **MR. SINGER:** -- my apologies.

3 **THE COURT:** -- his intent, the question is Herbst's

4 intent to continue to work with --

5 **MR. SINGER:** Correct.

6 **THE COURT:** -- whether he -- whether he intended to

7 continue to work with Gerace?

8 **MR. SINGER:** Correct.

9 **THE COURT:** I don't see that as a problem.

10 **MR. COOPER:** I agree that a statement of intent is

11 not hearsay. I've expressed my issues with the typographical

12 error.

13 The one thing I would ask the Court is in the future,

14 I'm not going to assume that it was intentional, but in the

15 future, if we're going to discuss what the parties want a

16 witness to testify to, that we do ask the witness to be

17 excused before we get into it, because I don't think it's

18 proper.

19 **THE COURT:** Well, I agree with that, which is why I

20 asked Mr. Singer at the very beginning of our discussion

21 whether he wanted the witness to be excused, and he said no.

22 But I think Mr. Cooper is right. I think that given

23 what we did discuss, the witness should have been excused.

24 And I will expect both sides to do that. If we're

25 going to discuss something that may color the witness's

1 testimony, I think that should be done outside the presence of
2 the witness. Okay?

3 But just as I didn't think Mr. Tripi did anything
4 that was wrong this morning, I don't think Mr. Singer did
5 anything that was wrong now. I just want to make sure both
6 sides understand that we're all on the same page.

7 **MR. SINGER:** And I would say, Judge, I think that
8 makes the tally 5 to 3?

9 **MR. COOPER:** Yeah. Unlike this morning, I'm not
10 accusing Rob of any --

11 **THE COURT:** I know you're not. I know you're not. I
12 just want to make it clear that I don't think anyone's done
13 anything inappropriate, at least intentionally inappropriate.
14 And we'll deal with these issues as they come up.

15 But I think you're right, witnesses should be excused
16 if there's any discussion that may color the witness's
17 testimony. Okay?

18 **MR. TRIPI:** Understood.

19 **THE COURT:** Thanks, everyone.

20 **MR. SINGER:** Yes, Judge, thank you.

21 **THE CLERK:** All rise.

22 (Off the record at 3:19 p.m.)

23 (Back on the record at 3:31 p.m.)

24 (Jury not present.)

25 **THE CLERK:** Back on the record.

03:31PM 1 **THE COURT:** Please be seated.

03:32PM 2 **THE CLERK:** We are back on the record for the
03:32PM 3 continuation of the jury trial in case number 19-cr-227,
08:48AM 4 United States of America versus Joseph Bongiovanni.

03:32PM 5 All counsel and parties are present.

03:32PM 6 **THE COURT:** Are you ready to go, Mr. Singer?

03:32PM 7 **MR. SINGER:** Yes, Judge.

03:32PM 8 **THE COURT:** And you'll be doing the cross?

03:32PM 9 **MR. SINGER:** Yes, Judge.

03:32PM 10 **THE COURT:** Okay. Anything from the government?

03:32PM 11 **MR. TRIPI:** No, Your Honor.

03:32PM 12 **THE COURT:** Let's bring them in, Pat.

03:32PM 13 Let's get the witness back in.

03:33PM 14 (Mr. Lepiane seated at 3:32 p.m.)

03:33PM 15 (Jury seated at 3:33 p.m.)

03:33PM 16 **THE COURT:** Okay. The record will reflect that all
03:33PM 17 our jurors are present again.

03:33PM 18 Mr. Lepiane, I remind you that you're still under
03:33PM 19 oath.

03:33PM 20 And, Mr. Singer, you may begin cross-examination.

03:33PM 21 **MR. SINGER:** Thank you, Your Honor.

03:34PM 22

03:34PM 23 **CROSS-EXAMINATION BY MR. SINGER:**

03:34PM 24 Q. How are you doing, Officer Lepiane?

03:34PM 25 A. Good afternoon.

03:34PM 1 Q. Good to see you. So as you testified, you were
03:34PM 2 supervising Peter Gerace as his supervision officer?

03:34PM 3 A. Correct.

03:34PM 4 Q. And he had a condition of his employment that he had to
03:34PM 5 work in a particular place that wasn't Pharaoh's?

03:34PM 6 A. He had a standard condition that he had to work at an
03:34PM 7 employment. Due to the fact that the State Liquor Authority
03:34PM 8 had denied him the ability to work there, we had to instruct
03:34PM 9 him that he could not work there.

03:34PM 10 Q. Okay. So on 8/31 of 2009, so August 31st of 2009, that's
03:34PM 11 when you first received a call from Special Agent Tom Herbst
03:34PM 12 from the FBI?

03:34PM 13 A. Correct.

03:34PM 14 Q. And Special Agent Herbst called you because he wanted to
03:34PM 15 make a report about certain things he learned as part of his
03:34PM 16 investigation, correct?

03:34PM 17 A. Yes.

03:34PM 18 Q. And they were things that he suspected were violations of
03:35PM 19 Mr. Gerace's supervision?

03:35PM 20 A. Yes.

03:35PM 21 Q. So the things that he reported to you, that he talked
03:35PM 22 about, use of cocaine?

03:35PM 23 A. Yes.

03:35PM 24 Q. And he also talked about distribution of cocaine?

03:35PM 25 A. Yes.

03:35PM 1 Q. And one of the reasons why he asked for your help was
03:35PM 2 that he believed that there was a search condition that
03:35PM 3 Mr. Gerace was subject to; is that right?

03:35PM 4 A. He was just providing me the information. He never asked
03:35PM 5 us if we would do a search, he provided the information and
03:35PM 6 then we went from there.

03:35PM 7 Q. So he never asked you about any type of search of
03:35PM 8 Pharaoh's that could be conducted?

03:35PM 9 A. I mean, he may have asked if there was a search
03:35PM 10 condition, I don't recall that --

03:35PM 11 Q. Okay.

03:35PM 12 A. -- but he didn't specifically ask us to search anywhere.

03:35PM 13 Q. But eventually there came a time where you wanted to
03:35PM 14 perform a search at Pharaoh's; is that correct?

03:35PM 15 A. Yes, sir.

03:35PM 16 Q. And in that regard, did you enlist the help of FBI to
03:35PM 17 help you establish that Peter Gerace had a connection to
03:36PM 18 Pharaoh's Gentlemen's Club?

03:36PM 19 A. We -- yes, we asked local law enforcement to help us with
03:36PM 20 that, yes.

03:36PM 21 Q. And one of those local law enforcement actors was also
03:36PM 22 the FBI?

03:36PM 23 A. Correct.

03:36PM 24 Q. Okay. And that's when you engaged in roughly about eight
03:36PM 25 weeks or so, two months or so, of surveillance of Pharaoh's?

1
2
3
4
5
6
7
8
9
L 0
L 1
L 2
L 3
L 4
L 5
L 6
L 7
L 8
L 9
2 0
2 1
2 2
2 3
2 4
2 5

A. Yes.

Q. And the purpose of that was to establish whether Peter Gerace had contact with there?

A. Try to establish the frequency of his being there.

Q. And that was done because one of the purposes of the search conditions is search a place that someone has either as a residence or business; is that right?

A. Any property under their control.

Q. Right. And so you had to establish there was some control before you could execute the search condition, right?

A. Correct.

Q. Okay. So you and Agent Herbst and others are coordinating your efforts over the course of about eight weeks or so?

A. Yes.

Q. And then on Halloween, so October 31st, 2009, that's when you decide to use your probation search condition to get into Pharaoh's and search it, right?

A. We planned the search for that day, yes.

Q. Okay. Now Special Agent Herbst, he was with you on that search, on the Halloween search?

A. He was, yes.

Q. And there were other probation officers with you on that search?

A. Yes, sir.

03:37PM 1 Q. And there were also other local law enforcement officers
03:37PM 2 on that search?

03:37PM 3 A. Yes.

03:37PM 4 Q. Do you remember Agent Herbst, that time he worked with a
03:37PM 5 Task Force Officer Bob Cottrell from the Amherst Police
03:37PM 6 Department?

03:37PM 7 A. Yes.

03:37PM 8 Q. Do you remember if Officer Cottrell was there?

03:37PM 9 A. I don't remember off the top of my head if he was there.

03:37PM 10 Q. Okay. So, you go in to conduct this search into
03:37PM 11 Pharaoh's, correct?

03:37PM 12 A. Yes.

03:37PM 13 Q. And at that time, Agent Herbst asks Mr. Gerace questions?

03:37PM 14 A. Agent -- at that time, I would talk to Peter Gerace, so I
03:37PM 15 asked him questions. I don't know if Agent Herbst talked to
03:37PM 16 him or not.

03:37PM 17 Q. Okay. So you can't recall whether or not Agent Herbst
03:37PM 18 had any conversations with him that day?

03:38PM 19 A. Not that I remember.

03:38PM 20 Q. Okay. In your coordination meetings, did Agent Herbst
03:38PM 21 talk to you about his desire to potentially open up a case or
03:38PM 22 further investigation into Mr. Gerace?

03:38PM 23 A. He -- the understanding was he was bringing me this
03:38PM 24 information because he was going to investigate Mr. Gerace
03:38PM 25 for drug dealing, yes.

03:38PM 1 Q. Okay. All right. So after the October 31st, 2009 search
03:38PM 2 of Pharaoh's, you receive a call from Special Agent Herbst
03:38PM 3 from the FBI indicating that Peter Gerace may want to
03:38PM 4 cooperate with the federal authorities to lessen his
03:38PM 5 violation?

03:38PM 6 A. Yes.

03:38PM 7 Q. Okay. And Agent Herbst made a call to you first about
03:38PM 8 that?

03:38PM 9 A. Yes.

03:38PM 10 Q. Okay. And then you said that a day or so later, Special
03:38PM 11 Agent Bongiovanni at that point in time gives you a call from
03:38PM 12 the DEA; is that right?

03:38PM 13 A. The next day, yes.

03:38PM 14 Q. Okay. So the next day Agent Bongiovanni calls you up and
03:38PM 15 communicates roughly the same thing?

03:39PM 16 A. Roughly, yes.

03:39PM 17 Q. Okay. He indicates that Mr. Gerace potentially is going
03:39PM 18 to become some type of source information to lessen his
03:39PM 19 violation?

03:39PM 20 A. He says that Mr. Gerace would like to talk and provide
03:39PM 21 information to lessen it. And that he was a prior source for
03:39PM 22 the DEA.

03:39PM 23 Q. Okay. And so you testified on direct that he was a
03:39PM 24 source of information for the DEA in the past?

03:39PM 25 A. That's what I was told, yes.

03:39PM 1 Q. Okay. All right. So you mentioned that there was
03:39PM 2 roughly a two-week delay between the time that you had the
03:39PM 3 calls with Agent Herbst and Agent Bongiovanni and the
03:39PM 4 sit-down that they had with Gerace; is that right?

03:39PM 5 A. Yes.

03:39PM 6 Q. Do you recall whether or not Mr. Gerace was ill during
03:39PM 7 that time period, and that contributed to the delay in the
03:39PM 8 meeting?

03:39PM 9 A. The -- the day that I actually received the phone call
03:39PM 10 from Agent Bongiovanni, he also spoke with Mr. Gerace, and he
03:39PM 11 said he had the swine flu or something, so, yes.

03:39PM 12 Q. Okay. And do you recall having any conversations with
03:39PM 13 Agent Herbst when you followed up with him to check out how
03:39PM 14 are things going, whether he indicated that an illness may
03:40PM 15 have delayed things?

03:40PM 16 A. I just remember him saying he was still trying to set the
03:40PM 17 meeting up, I don't remember the reason why.

03:40PM 18 Q. Okay. All right. But you do remember Mr. Gerace at
03:40PM 19 least communicating to you that he some type of illness?

03:40PM 20 A. Yes.

03:40PM 21 Q. Okay. So at some point in time, Mr. Gerace does meet
03:40PM 22 with the DEA and the FBI; is that right?

03:40PM 23 A. Yes.

03:40PM 24 Q. And you find out about that not because Agent Bongiovanni
03:40PM 25 called you, but because Agent Herbst called you, correct?

03:40PM

1 A. Yes.

03:40PM

2 Q. And Agent Herbst, he telephoned you after that meeting?

03:40PM

3 A. Yes.

03:40PM

4 Q. And you testified that Agent Herbst, in sum and

03:40PM

5 substance, said something to the effect of he didn't believe

03:40PM

6 that Mr. Gerace had any information that he could work with

03:40PM

7 at FBI?

03:40PM

8 A. Yes.

03:40PM

9 Q. But do you recall him also talking about how he would

03:41PM

10 continue to work with Peter Gerace nonetheless?

03:41PM

11 A. Yes, he said that he would do that.

03:41PM

12 Q. Okay. So he continued to work with Mr. Gerace?

03:41PM

13 A. I don't know if he continued to work, he said that he

03:41PM

14 didn't think he had any information, but he would continue to

03:41PM

15 work with him.

03:41PM

16 Q. Understand.

03:41PM

17 A. Yes.

03:41PM

18 Q. So the phone calls that you received in this situation,

03:41PM

19 is it fair to say that Agent Herbst called you about Peter

03:41PM

20 Gerace and his cooperation more than Agent Bongiovanni did?

03:41PM

21 A. Yes, I only spoke to Agent Bongiovanni that one time.

03:41PM

22 Q. So you only spoke to Agent Bongiovanni once?

03:41PM

23 A. Yes.

03:41PM

24 Q. And you testified on direct that the conversations that

03:41PM

25 you had didn't affect in any way what you were prepared to do

03:41PM 1 as a probation officer with responding to the violations
03:41PM 2 Mr. Gerace committed?

03:41PM 3 A. Correct.

03:42PM 4 **MR. SINGER:** Okay. Just one moment, Judge.

03:42PM 5 **BY MR. SINGER:**

03:42PM 6 Q. So before -- sorry, let me preface that again.

03:42PM 7 So after the search occurred, but before the sit-down
03:42PM 8 between Mr. Gerace and the FBI and DEA, you had meetings
03:42PM 9 internally that included Agent Herbst, correct?

03:42PM 10 A. After the search, before they met?

03:42PM 11 Q. Correct.

03:42PM 12 A. I had phone conversations with Mr. Herbst, yes.

03:42PM 13 Q. And do you remember also meeting with Assistant United
03:42PM 14 States Attorney Tony Bruce about Peter Gerace and his
03:42PM 15 violation?

03:42PM 16 A. Yes.

03:42PM 17 Q. And Agent Herbst was a member of that meeting that you
03:42PM 18 had with AUSA Bruce?

03:42PM 19 A. I don't know if that was after the search or before
03:43PM 20 without looking at my chronos, it would be in there though.

03:43PM 21 Q. Would looking at your chronos help refresh your
03:43PM 22 recollection as to that?

03:43PM 23 A. Yes, sir.

03:43PM 24 **MR. SINGER:** Okay. So I'm going to hand you a copy
03:43PM 25 of what's been marked as Government Exhibit 3501B, as in beta.

03:43PM

1

BY MR. SINGER:

03:43PM

2

Q. Could you take a look through those, Officer Lepiane, and when you're done, look up at me.

03:43PM

3

03:43PM

4

And I'll take those away from you, sir.

03:43PM

5

A. Yep.

03:43PM

6

Q. Did looking at that document help refresh your memory as to whether a meeting occurred or not?

03:43PM

7

03:43PM

8

A. Yes, it did occur.

03:43PM

9

Q. Okay. And what do you recall now that your memory's been refreshed about that meeting, when it occurred?

03:43PM

10

03:44PM

11

A. We met following the search to outline all the

03:44PM

12

noncompliance, and discuss what plan of action we would take.

03:44PM

13

Q. And AUSA Bruce, he works over at the U.S. Attorney's Office at that point in time?

03:44PM

14

03:44PM

15

A. Yes.

03:44PM

16

Q. And you understood him to be the individual who was interested in Organized Crime prosecutions?

03:44PM

17

03:44PM

18

A. Yes.

03:44PM

19

MR. SINGER: Okay. I don't have any further questions, Judge.

03:44PM

20

03:44PM

21

THE COURT: Any redirect?

03:44PM

22

MR. COOPER: Just very briefly, Judge.

03:44PM

23

03:44PM

24

REDIRECT EXAMINATION BY MR. COOPER:

03:44PM

25

Q. Mr. Lepiane, on cross-examination, you were just asked a

1 question about whether Special Agent Herbst of the FBI called
2 you more times than this defendant; do you remember being
3 asked that question?

4 A. Yes.

5 Q. Was it your impression from your communications with
6 Special Agent Herbst that he was interested in investigating
7 Peter Gerace?

8 A. Yes.

9 Q. Was it your impression, from your single conversation
10 with this defendant, that he was interested in investigating
11 Peter Gerace?

12 A. That's not what he said, no.

13 **MR. COOPER:** Thank you.

14 **THE COURT:** Mr. Singer?

15 **MR. SINGER:** No redirect, Judge.

16 **THE COURT:** You can step down, sir.

17 **THE WITNESS:** Thank you.

18 (Witness excused at 3:45 p.m.)

19 (Excerpt concluded at 3:45 p.m.)

20 * * * * *

21

22

23

24

25

CERTIFICATE OF REPORTER

In accordance with 28, U.S.C., 753(b), I
certify that these original notes are a true and correct
record of proceedings in the United States District Court for
the Western District of New York on February 15, 2024.

s/ Ann M. Sawyer

Ann M. Sawyer, FCRR, RPR, CRR

Official Court Reporter

U.S.D.C., W.D.N.Y.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIPT INDEX

EXCERPT - EXAMINATION OF S.U.S.P.O. PETER LEPIANE

FEBRUARY 15, 2024

W I T N E S S

P A G E

P E T E R L E P I A N E

2

DIRECT EXAMINATION BY MR. COOPER:

2

CROSS-EXAMINATION BY MR. SINGER:

29

REDIRECT EXAMINATION BY MR. COOPER:

38